



Court of Harris County, Texas. Defendants removed this action to this Court on July 26, 2013. *See* Doc. No. 1.

**II.**  
**ISSUES TO BE RULED UPON BY THE COURT**

2. Whether Daily is entitled to an order authorizing expedited discovery so that it may prepare for—and most efficiently present evidence at—its requested preliminary injunction hearing.

**III.**  
**FACTS**

3. In support of this Motion, Daily incorporates by reference the facts asserted in its Amended Complaint and Application for Preliminary and Permanent Injunctive Relief (the “Amended Complaint”). *See* Doc. No. 13.

**IV.**  
**APPLICABLE LAW**

4. The Court may grant expedited discovery before the Rule 26(f) meeting for “good cause,” meaning simply that the need for discovery outweighs any possible prejudice to the party from whom discovery is sought. *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002); *see also Combat Zone Corp. v. John/Jane Does I-2*, No. 2:12-CV-00509, 2012 U.S. Dist. LEXIS 180841, at \*2-3 (E.D. Tex. Dec. 21, 2012) (“An increasing majority of district courts, including several in the Fifth Circuit, have adopted a ‘good cause’ standard to determine whether to permit such expedited discovery.”).<sup>1</sup>

5. “Good cause” for granting expedited discovery generally exists where, as here, the plaintiff seeks expedited discovery in aid of a preliminary injunction hearing. *El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986, 991 (S.D. Tex. 2004) (“Expedited

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<sup>1</sup> Copies of unpublished cases cited herein are attached as Exhibit C.

discovery would be appropriate in cases involving preliminary injunctions or challenges to personal jurisdiction.”); *Hausser + Taylor LLC v. RSM McGladrey, Inc.*, No. 1:07-CV-2832, 2007 U.S. Dist. LEXIS 70098, at \*8 (N.D. Ohio Sept. 21, 2007) (permitting expedited discovery to “allow Plaintiff the opportunity to present evidence warranting a preliminary injunction”). Indeed, such relief is “routinely granted in actions involving infringement and unfair competition.” *Benham Jewelry Corp. v. Aron Basha Corp.*, No. 97 Civ. 3841, 1997 U.S. Dist. LEXIS 15957, at \*58 (S.D.N.Y. July 18, 1997).

6. Here, Daily seeks expedited discovery from Defendants in order to properly prepare for the hearing on Daily’s requested application for a preliminary injunction, which seeks to enforce the terms of the Non-Competition Agreement and Confidentiality Agreement entered into by Heidt and to protect Daily’s trade secrets and confidential information from improper misappropriation, disclosure, or use by Defendants. As noted in Daily’s Amended Complaint, Heidt’s non-competition obligations extend for 24 months after the termination of his employment on February 15, 2013, and for that reason, Daily seeks a hearing on its application for preliminary injunction as soon as reasonably possible in order to enforce its rights under the Non-Competition Agreement and to protect and obtain the return of its confidential and trade secret information.

## V. **DISCOVERY REQUESTED**

7. Daily requests the following expedited discovery to prepare for the preliminary injunction hearing. The requested discovery is reasonable in scope, and the information sought is crucial to Daily’s prosecution of this case and is highly relevant to the issues to be presented at the preliminary injunction hearing. The requested depositions are necessary because the identified witnesses are or may be adverse to Daily and are or may be subject to the control of

the opposing parties. Daily requests this discovery in addition to other discovery, including additional depositions of these and other potential witnesses, which may be necessary to prepare to present the merits of this case.

**A. Requests to Heidt**

8. Daily requests that the Court shorten the time for Heidt to serve Rule 26 Initial Disclosures and respond to Daily's Interrogatories and Requests for Production. Those requests are attached to this Motion as Exhibit A.

**B. Requests to WIKA Instrument and WIKA Process**

9. Daily requests that the Court shorten the time for WIKA Instrument and WIKA Process to serve Rule 26 Initial Disclosures and respond to Daily's Requests for Production, which are attached to this Motion as Exhibit B.

**C. Depositions**

10. Daily requests that the Court order the following depositions to take place on an expedited basis:

- a. Defendant Eric Heidt
- b. Lori Ann Gerken of Defendant WIKA Instrument.
- c. Paul Lemmens of Defendant WIKA Process.
- d. Dave Wannamaker of WIKA.
- e. Kelvin Tan of WIKA.
- f. Bob Poteet of Gayesco.
- g. Corporate representative(s) of WIKA Instrument, WIKA Process and Gayesco.

**VI.**  
**PRAYER FOR RELIEF**

11. Daily requests that the Court open the discovery period immediately and grant this Motion for Expedited Discovery as follows:

- a. Heidt must serve Rule 26 Initial Disclosures and respond to, and produce the documents responsive to, Daily's First Set of Interrogatories and First Requests for Production within fourteen calendar days from the date of the Court's order;
- b. WIKA Instrument and WIKA Process must serve Rule 26 Initial Disclosures and respond to, and produce the documents responsive to, Daily's First Requests for Production within fourteen calendar days from the date of the Court's order; and
- c. Daily is authorized to take the depositions of the above-named individuals at least seven (7) calendar days before the date of the preliminary injunction hearing at a date and time agreed by the witness or, failing agreement, as set by Daily's notice of deposition.

Respectfully submitted,

/s/ Gretchen Agena

Gretchen Agena (Attorney-in-Charge)

Texas State Bar No. 24040396

Federal I.D. No. 38500

Kevin Little

Texas State Bar No. 24070155

Federal I.D. No. 1138412

LITTLER MENDELSON, P.C.

1301 McKinney Street

Suite 1900

Houston, Texas 77010

713.951.9400 (Telephone)

713.951.9212 (Facsimile)

gagenal@littler.com

klittle@littler.com

M. Scott McDonald

Texas State Bar No. 13555505

Federal I.D. No. 9500

LITTLER MENDELSON, P.C.

2001 Ross Avenue

Suite 1500, LockBox 116

Dallas, TX 75201.2931

214.880.8100 (Telephone)

214.880.0181 (Facsimile)

smcdonald@littler.com

**ATTORNEYS FOR PLAINTIFF DAILY  
INSTRUMENTS CORPORATION d/b/a  
DAILY THERMETRICS**

**CERTIFICATE OF CONFERENCE**

I hereby certify that, on August 23, 2013, I conferred by telephone with counsel for Defendants Eric Heidt, WIKI Instrument, LP, and WIKI Process Solutions, LP, who indicated that their respective clients are opposed to the relief sought in this Motion.

/s/ Kevin Little

Kevin Little

**CERTIFICATE OF SERVICE**

I hereby certify that, on August 23, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Joseph Y. Ahmad  
AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING PC  
1221 McKinney Street, Suite 3640  
Houston, Texas 77010  
*Attorneys for Defendant Eric Heidt*

Kenneth M. Krock  
RAPP & KROCK, PC  
3050 Post Oak Blvd., Suite 1425  
Houston, Texas 77056  
*Attorneys for Defendant WIKA Instrument, LP*

Felicity A. Fowler  
HAYNES AND BOONE, LLP  
1221 McKinney, Suite 2100  
Houston, Texas 77010  
*Attorneys for Defendant WIKA Process Solutions, LP*

/s/ Gretchen Agena  
Gretchen Agena